IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1976

NO. 76 - 76-903

DAVID FEIST and DOLORES FEIST, his wife, MYRTLE SINGLEY and MARGARETA HAGSTRAND,

Appellants

vs.

LUZERNE COUNTY BOARD OF ASSESSMENT APPEALS,

Appellee

ON APPEAL FROM THE SUPREME COURT OF PENNSYLVANIA

REPLY BRIEF TO PETITION FOR WRIT OF CERTIORARI

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January 26, 1977

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The Petition of the Appellants seeks review of State Court decisions upholding the assessment procedures utilized in Luzerne County, Pennsylvania, for the 1972 tax year.

This litigation was initiated pursuant to an appeal, authorized by Section 5350 of The Third Class County Assessment Code (Act of June 26, 1931, P.L. 1379.9, as amended; 72 P.S. Section 5350). This section mandates that the Court determine a taxpayer's claim in accordance with the following standard;

> "In cases of real property, the Court shall determine, from the evidence submitted at the hearing, what ratio of assessed value to actual value was used generally in the taxing district, and the Court shall direct the application of the ratio so found to the value of the property which is the subject matter of the Appeal, and such shall be the assessment."

A. WERE PETITIONERS PROPERTIES UNLAWFULLY SINGLED OUT IN VIOLATION OF THE FOURTEENTH AMENDMENT?

Petitioners assert that the intensive reassessment activity which took place in their communities for the 1972 tax year constitutes unlawful discrimination which denied them equal protection of the laws. Although it is admitted that assessments for large numbers of properties in Sugarloaf Township and Conyngham Borough were changed in 1972, Respondents do not agree with the claim that these areas were unlawfully singled out.

Testimony presented at the trial of this case shows that Sugarloaf Township and Conyngham

Borough were treated in the same manner as all other property in Luzerne County. Even before the intensive studies performed by the assessor were commenced, standard assessment procedures applicable to all taxable property in the county had been completed in Sugarloaf Township and Conyngham Borough. The performance of regular assessment activities in these communities is admitted by the Petitioners at Page 25 of their Brief.

The assessment activity in Sugarloaf Township and Conyngham Borough for 1972 was a two-step process. This process was explained by the Luzerne County Assessor, Mr. Thomas Garrity; (R 186a);

> "Q: Now, between August 1, 1970 and July 31, 1971, did these last two mentioned individuals (Mr. Valkusky and Mr. Corazza) as part of their general duties, view the exteriors of every property located in Sugarloaf Township and Conyngham Borough for assessment purposes?
>
> A: That is correct.
>
> Q: All right; now, tell me generally as it related to those two gentlemen what their duties were between August 1, 1970 and July 31, 1971 with regard to the properties in Sugarloaf Township and Conyngham Borough?
>
> A: They went into the township and borough; they had all the maps covering all the properties in both municipalities. They had books of sales of both municipalities; and they had these cards for both municipalities for every property. They viewed every property to ascertain that

there had been no visual changes as differing from the card. If there was, they would enter and try to pick up information on it, make what measurements they could, and they were given help on some measurements because I couldn't have them take too much time on all the measurements.

Q: Is it fair to say, Mr. Garrity, that these two gentlemen engaged in an assessment of all the properties in those two municipalities during that calendar year?

A: That is correct.

Q: All right; and when you refer to assessment of properties, you are referring to an examination of, or inspection of, or general review of properties either existing or recently constructed to determine whether there should be a change in the assessment for the next taxable year; is that correct?

A: That is correct.

Q: All right; and that had all been completed with regard to Sugarloaf Township and Conyngham Borough for 1972 purposes before Mr. Craze and Mr. Walko got--before they got in anyway involved?

A: That is correct."

The two individuals mentioned in the above quotation, Mr. Craze and Mr. Walko, were the individuals who entered the two municipalities in question at the request of the Luzerne County Assessor. Their entry into Sugarloaf Township and Conyngham Borough was explained by

the Assessor as follows: (R 187a);

"Q: Now, during the same period, August 1, 1970 to July 31, 1971, you assigned Mr. Craze and Mr. Walko as part of a special assignment to these two municipalities, is that correct?

A: That is correct.

Q: All right; now, would you explain to us why it was necessary, in your opinion, to send these men in there after the two previously-mentioned gentlemen had already assessed the area for 1972 purposes?

A: Well, the results of these men being in the field, and the results of the sales analysis, indicated that these two municipalities had properties on the tax role far less that market value in comparing with all other municipalities in their own school district. They were much less in comparing the school district with the other school districts. There was a difference. In the whole county, there were no other municipalities at this point of study that were anywhere near as low as these were."

As the above testimony shows, intensive review of these two communities commenced only after standard procedures of the Assessor's Office determined that further investigation was required. Any "singling out" that occurred in these communities, occurred only after standard assessment practices revealed a disparity between assessed valuation in Sugarloaf Township and Conyngham Borough and assessed valuation in the remainder of Luzerne County.

The trial Court characterized the efforts

of the Luzerne County Assessor's Office as follows: (R 67a)

> "In fact, it appears to the Court that Mr. Garrity would be subjectto censure by the owners of the other 113,296 properties in Luzerne County if he had not re-examined the Conyngham Borough and Sugarloaf Township assessments in view of his studies and the results thereof. As to equal protection of the laws, no authority has been called to the Court's attention that this is served by maintaining inequality of treatment in determination of fair market value, and there is no evidence that Mr. Garrity was incorrect in the determination by his staff and himself of the market values of the three subject properties, or for that matter, of the 985 other properties in these two municipalities, i.e., the assessment changed, in the 1972 assessment procedure. There is absolutely no proof that a single family dwelling in either of these municipalities is assessed differently, that a market value thereof is determined by a different manner than or a different ratio than 35 percent is applied thereto than is done, for example, in any other borough or second class township, or first class township of city in Luzerne County."

Petitioners cite the case of Sioux City Bridge Company vs. Dakota County, Neb., 260 U.S. 441, 43 S.Ct. 190 (1923) in support of the claim that they have been denied equal protection of the laws. Respondents submit that there are several important factual differences between Sioux City Bridge Company, supra., and the case at hand. First, the subject property in Sioux City Bridge Company, supra., was admittedly

taxed at 100 percent of fair market value while all other real estate in the county was taxed at 55 percent of the fair market value. In the present case, all parties admit that the Luzerne County Assessor's Office applies the ratio of 35 percent to the fair market value of all property to arrive at assessed valuation. Secondly, the only remedy of the taxpayer in the Sioux City Bridge Company, supra., was to request an increase in the assessed valuation of all other properties in the taxing district. In Luzerne County, all taxpayers have the right to request that the assessed valuation of their property be reduced through appeal to the Board for the Assessment and Revision of Taxes, pursuant to Section 5350 of the Third Class County Assessment Code, supra.

Petitioners would have the Court compare the assessment practices condemned in Sioux City Bridge Company, supra., with the assessment practices utilized in Luzerne County in 1972. It is Respondent's position that such a comparison cannot be made. There is no testimony in this case that would support a finding that the Luzerne County Assessor intentionally or arbitrarily treated Petitioners property differently than any other property in the county. The rights afforded Petitioners under Section 5350 of the Third Class County Assessment Code, supra., have been fully realized. Therefore, the inequities which existed in Sioux City Bridge Company, supra., are not present here.

It is interesting to note that the Supreme Court in Sioux City Bridge Company, supra., emphasized a proposition long relied upon by courts of the Commonwealth of Pennsylvania. In discussing the relative importance of fair

market value to equality of taxation, the Supreme Court in that case stated:

> "This Court holds that the right of the taxpayer whose property alone is taxed at 100 percent of its true value, is to have his assessment reduced to the percentage of that value at which others are taxed, even though this is a departure from the requirement of statute. The conclusion is based on the principal that where it is impossible to secure both the standards of the true value, and the uniformity and equality required by law, the latter requirement is to be preferred as the just and ultimate purpose of the law."

This same proposition was stated by the Pennsylvania Superior Court in the case of Nesbitt Appeal, 171 Pa. Superior 273; (1952) 90 A2d, 246, in the following manner:

> "The all - important question where the assessed valuation is less than present-day market value, as here, is uniformity. The assessed valuation should as nearly as possible represent the actual value, but it must be uniform no matter whether the proper standard is followed or not."

Petitioners successfully exercised their right to contest the fair market value placed upon their properties by the Assessor. In addition,the trial court in this case found as a fact that the Luzerne County Assessor invariably applies the ratio of 35 percent to the fair market value to arrive at assessed valuation of property. (R 37a). It is therefore Respondent's position that uniformity of taxation has been achieved, and that the fourteenth amendment rights of Petitioners

have not been violated by agencies or officials of Luzerne County.

B. WERE RESIDENTIAL PROPERTIES IN SUGARLOAF TOWNSHIP AND CONYNGHAM BOROUGH UNLAWFULLY SINGLED OUT FOR 1972 ASSESSMENT PURPOSES?

At Page 32 of the Petitioners Brief, it is implied that there was a "failure to consider commercial properties or undeveloped land for revaluation in 1972..." Through this statement, an attempt is made to create a sub-class within each affected community, which was denied equal protection of the laws. Specifically, Petitioners assert that owners of residential properties did not receive equal protection of the laws as the special assessment in 1972 was limited to residential properties. Once again, Petitioners have overlooked the fact that all properties in Sugarloaf Township and Conyngham Borough were considered under normal assessment practices for 1972 before any special assessment or intensive re-evaluation took place. (R 186a)

It is admitted that residential properties in Sugarloaf Township and Conyngham Borough received extensive review and reassessment for the 1972 tax year. However, such an admission will not support the claim that all other classes of property in all other areas of the county were not considered for reassessment. As stated by the trial Court (R 61a, 62a);

> "There is no evidence contrary to Mr. Garrity's repeated testimony that the county assessor applies a 35 percent ratio to the fair market value determined for a particular property to arrive at assessed

valuation...There are differences of opinion among the real estate experts as to fair market value of selective properties. However, the evidence does not support any conclusions that Mr. Garrity and the sub-assessors deliberately elected to raise estimates of fair market value above the levels of said values throughout the county in these two municipalities or to apply different ratios to the value estimates than those applied in other municipalities in the county."

In determining Petitioners Fourteenth Amendment claim, the trial court held (R 70a - 71a);

"Appellants maintain that the fact that residential properties bore the brunt of this reassessment is reason to declare the entire 1972 County assessment illegal, upon constitutional grounds of denial of equal protection of the laws to residential property owners in Sugarloaf Township and Conyngham Borough. As a matter of general law, what is constitutionally prohibited is 'the intentional, systematic omission or undervaluation' of other classes of property, in other words, a deliberate and purposeful discrimination in the application of the tax. 16A C.J.S. Constitutional Law Sec. 522; Stilman v. Tax Review Board, 402 Pa. 492.

* * *

"The hearing judge is on the opinion that the reassessment of residential properties, and particularly the three subject properties, in Conyngham Borough and Sugarloaf Township was to correct inequality as

indicated by Garrity's studies and thus to achieve practical equal protection of the laws rather than to violate anyone's right to equal protection in the 1972 assessment. Therefore, the hearing judge concludes that there is no merit to this reason submitted by appellants as the basis for their proposed invalidation of the entire 1972 Luzerne County assessment."

For these reasons, Respondent submits that the reassessment of residential properties was not the result of some deliberate unlawful scheme, but rather a direct result of information received by the assessor which information mandated reassessment in order to achieve uniformity of taxation.

C. DID THE PROCEDURES OF THE LUZERNE COUNTY ASSESSOR'S OFFICE SYSTEMATICALLY UNDERVALUE PROPERTIES IN LUZERNE COUNTY?

Petitioners also allege that practices of the Luzerne County Assessor resulted in a deliberate oversight of differences between fair market value as assigned and the actual fair market value of properties. Through extension of this claim, Petitioners assert that the application of the 35 percent ratio to assigned value resulted in a lack of uniformity of taxation.

In addition to arguments previously addressed, Petitioners attack the Luzerne County Assessor's practices on the basis that out-dated information was used in determining fair market value of taxable properties. Petitioners contend that an interior view of all properties is constitutionally mandated in order to achieve uniform taxation. No case has been cited by Petitioners which would

support this proposition. In view of the fact that Luzerne County had 117,977 taxable properties in 1972, the cost of such an assessment practice would be astronomical. (R 38a)

Petitioners next allege that the trial Court improperly limited their proposed testimony with respect to taxable properties in Luzerne County. It should be noted that Petitioners presented testimony of two expert real estate witnesses at the trial of this case, which experts testified as to over 130 specific properties in Luzerne County. (R 436a; R 856a) Certainly, they were given ample opportunity to present evidence as to the common assessment level utilized in Luzerne County.

Under Pennsylvania law, a taxpayer is not entitled to have his assessment reduced to the lowest ratio of assessed value to market value to which he can point in the taxing district if that lowest ratio does not reflect the common assessment level which prevails in the district as a whole. Deitch Company vs. Board of Property Assessment 417 Pa. 213; 209 A.2nd 397 (1965). Although a court, in considering whether or not a particular assessment is lacking in uniformity, may rely on any relevant evidence (McKnight Shopping Center vs. Board of Property Assessment 417 Pa. 234, (1965); 209 A.2nd 389), the pertinent ratio is that which prevails in the entire taxing unit, not merely in a portion of the unit. Pittsburgh Miracle Mile Shopping Center vs. Board of Property Assessment 417 Pa. 243 (1965); 209 A.2nd 394).

Based upon the above Pennsylvania caselaw, and in view of the finding of the

trial court that the assessor consistently applied the ratio of 35 percent to assigned fair market value, Respondent submits that Petitioners were uniformly taxed for the 1972 tax year.

Conclusion

The Writ of Certiorari is not a matter of right, but of sound judicial discretion. The Writ is to be granted only where there are special and important reasons therefore. Fay vs. Nola, 83 S Ct. 822; 372, U.S. 391.

For the reasons set forth in this Brief, Respondent respectfully submits that the Petitioners have failed to set forth sufficient justification to involve the jurisdiction of this Court under Supreme Court Rule Nineteen (19) and, therefore, Respondent requests that Certiorari be denied.